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Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234

573-751-1847 (Fax Number)

573-526-5695 (TT)

December 18, 1996

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STEVEN DOTTHEIM
Acting General Counsel

Office of the Secretary
Federal Communications Commission
Room 222, 1919 M Street, N.W.
Washington DC 20554

**RE: CC Docket No. 96-45; Federal-State Joint Board Recommended Decision On
Universal Service**

Dear Clerk of Commission:

Enclosed for filing in the above-captioned case are an original and four (4) conformed copies of **COMMENTS OF THE MISSOURI PUBLIC SERVICE COMMISSION**.

Please date and time stamp the extra copy, which is enclosed, and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Penny G. Baker
Deputy General Counsel
573-751-6651
573-751-9285 (Fax)

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Enclosures
cc: Service List

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Federal-State Joint Board
Recommended Decision on
Universal Service

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CC Docket No. 96-45

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**COMMENTS OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

On November 7, 1996, the Federal-State Joint Board adopted a Recommended Decision, as required by Section 254 of the Telecommunications Act of 1996 ("1996 Act"), regarding universal service. The Federal Communications Commission ("FCC") released on November 18, 1996 a Public Notice requesting comments on the Universal Service Recommended Decision. In that Public Notice, the FCC requested comments on several specific topics including competitive neutrality, baseline amount of support to low-income consumers, identification of high cost areas for purposes of providing discounts to schools and libraries, services considered to be "necessary for the provision of health care," and the administration of the support mechanisms for universal service funds.

The Missouri Public Service Commission ("MPSC") hereby provides these comments on the limited area relating to the policy and administration of the support mechanism for federal universal service funds. The MPSC currently has dockets pending which address many of the other issues which the FCC specifically cited. Thus, providing comments in those other areas would not be appropriate at this time.

Interstate/Intrastate Funding Issue

The Telecommunications Act of 1996 gives the following instructions to the regulators in constructing universal service fund mechanisms:

Sec. 254(b)(5). SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS-
There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

Many have interpreted the above language to mean that all implicit subsidies for universal service funds should be made explicit on a going-forward basis. An example of a federal implicit subsidy that should now be explicitly mandated is the weighting of Dial Equipment Minutes (DEM) for small telephone companies.

Others would further interpret the above language to mean that all (both federal and state) implicit subsidies should be included in the Federal Universal Service Fund. However, due to the numerous costing and pricing methodologies being utilized by the States, it is difficult to identify these intrastate subsidies, and therefore, they should be left to the states to identify and deal with in a state universal service fund. For instance, in Missouri, we have relied on an incremental unit costing methodology for Southwestern Bell Telephone Company and have set rates based on the cost of service plus a reasonable level of contribution toward the collection of joint and common costs. Other states rely on a fully allocated costing methodology which has common costs included in the calculation of "cost." There are numerous justified variations among states on the calculation of costs, the imposition of collecting joint and common costs, and the setting of rates. Thus, it is almost impossible and unreasonable to mandate one method to be used by all states. The specific language of the 1996 Act makes it clear that Congress intended to give each state

the flexibility of establishing a universal service fund for intrastate services. NECA and Southwestern Bell have both attempted to quantify the total amount of implicit subsidies on an aggregate (nationwide intrastate and interstate) basis. The amount that has been identified has been in the \$20 billion dollar range. If one were to assume that Congress intended to have one universal service fund, the amount of that fund would then need to be set at this amount. But as stated earlier, this was not the intent of Congress. The Act clearly leaves to the states the jurisdiction over intrastate rate making issues and the funding of the intrastate universal service fund.

The Act further states:

Sec. 254(f). STATE AUTHORITY-A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that state. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanism.

Furthermore, the Act requires:

Sec. 254(k). SUBSIDY OF COMPETITIVE SERVICE PROHIBITED- A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

These three sections when read together from the 1996 Act make it clear that the Congress did not intend for the Federal Universal Service Fund to include the intrastate implicit subsidies that are being recommended by the Joint Board and considered by the FCC. Due to the varied state methodologies on costing and pricing, a consolidation of the funds would lead to a mismatch in pricing and result in discrimination. Those states that have costing methodologies that explicitly include these costs will be at a pricing disadvantage, since users within that state will presumably contribute (through higher fees charged by carriers) to a federal universal service fund at an equal rate to all other users across the nation, yet will not experience a like reduction in their intrastate rates that may be experienced by users in other states using other costing methodologies, e.g., incremental unit costing.

The MPSC does not believe that the FCC has the authority necessary to base contributions on intrastate telecommunications revenues and further is concerned that to assess intrastate telecommunications revenues of only those carriers which provide both inter- and intrastate telecommunications services is inherently discriminatory. Those carriers which provide only intrastate telecommunications services will not be assessed, awarding an unfair competitive advantage to those providers.

Section 254(d) states that every telecommunications carrier that provides interstate telecommunications services must contribute to preserve and advance universal service. Congress has specified that these contributions must be equitable and nondiscriminatory. Congress specifically indicated that contributions were to be provided by telecommunications carriers that provide interstate telecommunications services. When

that requirement is read together with Section 254 (f) which contemplates state universal service programs, it becomes quite apparent that Congress intended the specific reference to interstate carriers to mean something. To have any meaning or effect, that distinction between interstate and intrastate carriers necessarily must be continued into the support mechanism. Only interstate revenues should be utilized for the funding of the federal universal service program, leaving the intrastate telecommunications revenues for funding the complementary state universal service programs.

Congress has made it clear that there is a distinction between the federal and state universal service programs, and thus the same distinction should follow related to the contributions for those programs. The Courts have found similar distinctions. In *A T & T Communications of the Mountain States, Inc. v. Public Service Commission of Wyoming*, 625 F. Supp. 1204, (D. Wyo., Nov 26, 1985) the Wyoming PSC attempted to require A T & T to pay local exchange companies one percent of all of its billings, for both interstate and intrastate calls, to cover the costs of local disconnect service. The United States District Court found that the PSC had exceeded its jurisdiction by including interstate calls in the base for calculating contributions for the cost of local disconnect service. Clearly, the FCC has authority to base the support mechanism for a federal universal service program on interstate revenues. However, just as clearly, the authority to utilize the intrastate telecommunications revenues as a base for contributions to state universal service programs lies solely with the individual state commissions.

By utilizing FCC has endorsed a plan whose both interstate and intrastate telecommunications revenues as a basis for contributions, the effect is discriminatory.

Telecommunications traffic carried by a carrier only authorized to provide intrastate telecommunications service will not be subject to contributions, while similar traffic carried by an interstate telecommunications carrier will be subject to contributions for the federal universal service fund. This leads to a situation where there is exactly the same type of telecommunications service, with one subject to federal assessment while the other is not. This could even lead to an unfair competitive advantage. Arguably the end-user will be paying for these contributions through raised rates in order to make the telecommunications carrier whole. If only some of the carriers are forced to contribute, those who are not will have an unfair competitive advantage.

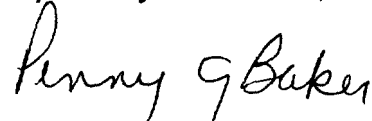
This advantage cannot be alleviated by requiring those carriers which only provide intrastate telecommunications services to contribute to the federal universal service fund because clearly the statute does not permit that. Congress limited the authority of the Joint Board and the FCC to require contributions to federal universal service support mechanisms from those carriers which provide interstate telecommunications services. The only viable alternative that would allay this concern is to use only the interstate telecommunications revenues to fund the Commission's federal universal service programs.

There is further concern that relying upon the intrastate telecommunications revenues as the base for contributions to support federal universal service may adversely affect State programs and the low income, disabled and rural consumers that depend on those State programs for access to the telecommunications network. Section 254 (f)

anticipates state universal service programs which should complement the federal program, not compete with it.

Further, Section 254 (f) provides: "Every telecommunications carriers that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." Thus, it is certain that most states will be adopting additional regulations which provide for contributions from those carriers of intrastate telecommunications services. This will undoubtedly result in some intrastate telecommunications services being assessed for contributions to a federal universal service fund while other intrastate telecommunications services are assessed for both federal and state universal service funds. This is clearly discriminatory on its face and should be avoided.

Respectfully Submitted,



Penny G. Baker
Deputy General Counsel
Missouri Bar No. 34662
Attorney for the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(573)751-6651
(573)751-9285 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been served by first class United States mail, postage prepaid, to all persons listed on the service list attached to the Public Notice released November 18, 1996 (DA 96 1891) this 18th day of December, 1996.

Penny G Baker